

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariana Thomas	Team: Squad #13	CCRB Case #: 202104348	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/22/2021 1:00 PM	Location of Incident: 45th Avenue and Smart Street	Precinct: 109	18 Mo. SOL 1/22/2023	EO SOL 1/22/2023	
Date/Time CV Reported Thu, 07/22/2021 3:19 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 07/22/2021 3:19 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Cesar Dorado	25149	922279	109 PCT
2. LT Mark Schwartz	00000	949641	109 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Thomas Calio	22513	957414	109 PCT
2. POM Matthew Bruszewski	24926	969551	109 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Cesar Dorado	Abuse: Police Officer Cesar Dorado threatened § 87(2)(b) with the use of force.	
B.POM Cesar Dorado	Abuse: Police Officer Cesar Dorado threatened § 87(2)(b) with the use of force.	
C.POM Cesar Dorado	Abuse: Police Officer Cesar Dorado threatened § 87(2)(b) with the use of force.	
D.POM Cesar Dorado	Abuse: Police Officer Cesar Dorado threatened § 87(2)(b) with the use of force.	
E.LT Mark Schwartz	Abuse: Lieutenant Mark Schwartz seized § 87(2)(b) s property.	

Case Summary

On July 22, 2021, § 87(2)(b) filed this complaint via the CCRB's website on behalf of himself and his girlfriend, § 87(2)(b) § 87(2)(b).

On July 22, 2021, at approximately 1:00 p.m., at 45th Avenue and Smart Street in Queens, § 87(2)(b) and § 87(2)(b) were riding on § 87(2)(b)'s electric bicycle when Police Officer Cesar Dorado and Police Officer Matthew Bruszewski, both of the 109th Precinct, stopped them. Through his car's public address ("PA") system, PO Dorado allegedly threatened the civilians with the use of force (**Allegation A-B: Abuse of Authority, § 87(2)(g)**). PO Dorado and PO Bruszewski exited the police car and PO Dorado allegedly threatened the civilians with the use of force again (**Allegation C: Abuse of Authority, § 87(2)(g)**). **Allegation D: Abuse of Authority, § 87(2)(g)**. PO Dorado, under the direction of Lieutenant Mark Schwartz, of the 109th Precinct, seized § 87(2)(b)'s bike (**Allegation E: Abuse of Authority, § 87(2)(g)**). PO Dorado issued § 87(2)(b) three moving violations for operating his vehicle on the sidewalk (**Board Review 01**), without a helmet (**Board Review 02**), and without a license (**Board Review 03**).

§ 87(2)(b)

Body-worn camera ("BWC") footage was obtained from the NYPD Legal Bureau. The BWC footage is in IAs #58-61 (**Board Review 05-08**) and summarized in IAs #62 and 64-65 (**Board Review 09-11**). Four cell phone videos of this incident, which begin after the officers' exit their car, were obtained from § 87(2)(b). They are located in IAs #28-31 and summarized in the same IAs (**Board Review 12-15**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Cesar Dorado threatened § 87(2)(b) with the use of force.

Allegation (B) Abuse of Authority: Police Officer Cesar Dorado threatened § 87(2)(b) with the use of force.

In PO Dorado's BWC footage (**Board Review 06**), beginning at the 00:02 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Dorado, who holds the microphone to a police car's PA system in his right hand as he sits in the driver's seat, waves his outstretched right hand to the left. § 87(2)(b) who is visible through the windshield, holds her right hand out in front of her face, with her palm facing up. At 00:07, the front passenger's window is lowered. At 00:18, PO Dorado returns the microphone to its holder and moves the car forward slightly. At 00:30, § 87(2)(b) who is now visible through the windshield, outstretches his left arm and appears to speak, though there is no audio. At 00:40, PO Dorado parks the car, exits, and walks towards the civilians, who are seated on the bike.

§ 87(2)(b)'s statement was somewhat consistent with the BWC footage (**Board Review 16**). He testified that he was not wearing a helmet, that § 87(2)(b) was wearing a helmet, and that they had rode down the entire length of the sidewalk on § 87(2)(b)'s electric bike. Once they rode onto the street, PO Dorado made a U-turn, stopped briefly, and looked at them as they were about to ride away. One minute later, PO Dorado activated the car's turret lights and sirens and pulled them over. Over his car's PA system, PO Dorado repeated a few times, "Get off the bike, if you don't get off the bike, I'm gonna hit you off the bike." § 87(2)(b) asked what he did wrong and why he needed to get off his bike to no response. § 87(2)(b)'s statement was consistent with § 87(2)(b)'s statement (**Board Review 17**).

PO Dorado's statement was generally consistent with the BWC footage (**Board Review 18**). He

testified that he observed § 87(2)(b) who was operating an electric motorcycle without a helmet, and § 87(2)(b) who was sitting behind § 87(2)(b) and wearing a helmet, ride down the sidewalk to the crosswalk at 45th Avenue and Smart Street. PO Dorado stopped his police car in the middle of the intersection, approximately 12 feet from § 87(2)(b)'s bike. § 87(2)(b) stopped his bike and looked at PO Dorado. § 87(2)(b) who was holding onto the handlebars, repeatedly said in a confrontational tone, "What?" while shrugging his shoulders. In PO Dorado's experience with motorcycle stops, civilians typically "take off," and § 87(2)(b)'s attitude and the fact that he remained on the bike with his hands on the handlebars suggested that he might do so. PO Dorado let his car roll forward slowly, such that it was approximately 18 to 20 inches from the back of § 87(2)(b)'s bike. He lowered his windows and ordered the civilians to get off the bike. § 87(2)(b) put her hands to her ear, shook her head, and said, "What?" Over his car's PA system, PO Dorado ordered them to get off the bike, but the civilians acted like they could not hear him, by saying, "What?" and putting their hands to their ears. PO Dorado denied saying, "I'm gonna hit you off the bike" or threatening the civilians with the use of force from inside his police car.

PO Bruszewski's statement was somewhat consistent with the BWC footage and PO Dorado's statement (**Board Review 19**). He testified that from inside the police car, PO Dorado gestured for the civilians to get off the bike by waving his hand. PO Dorado mouthed "Get off the bike" to the civilians, but he did not speak aloud while inside the car. PO Bruszewski denied hearing PO Dorado say, "If you don't get off the bike, I'm gonna hit you off the bike."

NYPD Patrol Guide, Procedure 221-01, states that force may be used when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (**Board Review 20**).

§ 87(2)(g)

the audio on the BWC footage begins after the alleged statement was made. § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Cesar Dorado threatened § 87(2)(b) with the use of force.

Allegation (D) Abuse of Authority: Police Officer Cesar Dorado threatened § 87(2)(b) with the use of force.

In PO Dorado's BWC footage (**Board Review 06**), beginning at the 01:0 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Dorado orders § 87(2)(b) whose right hand is on the right handlebar, to put the kickstand down and get off the bike. At 01:05, § 87(2)(b) asks PO Dorado why he is harassing him and PO Dorado replies, "Dude, in two seconds, I am going to rip you off the bike. I'm giving you a lawful order to step off the bike." § 87(2)(b) and § 87(2)(b) get off the bike, as § 87(2)(b) tells PO Dorado he is not going to rip him off the bike.

PO Bruszewski's BWC footage (**Board Review 05, 30**), at the 00:58 minute-mark of the media player timestamp (visible at the bottom of the screen), captures PO Dorado standing in front of § 87(2)(b)'s bike, as the civilians remain seated on it. There are no civilians visible in the general vicinity.

§ 87(2)(b)'s statement was somewhat consistent with the BWC footage. He testified that PO Dorado and PO Bruszewski exited the police car and PO Dorado said to him and § 87(2)(b) "Get off the bike or I'm gonna hit you off the bike" § 87(2)(b) asked why he was trying to hit him

off the bike. PO Dorado repeatedly ordered § 87(2)(b) to get off the bike. § 87(2)(b) ultimately complied. § 87(2)(b)'s statement was consistent with § 87(2)(b)'s statement.

PO Dorado's statement was generally consistent with the BWC footage. He testified that from inside his patrol car, he issued approximately 12 verbal orders to get off the bike for approximately a minute and a half, and that he then exited his car and ordered § 87(2)(b) to put his kickstand down and get off the bike. § 87(2)(b) asked PO Dorado why he was harassing him. PO Dorado said he was going to, "Rip [him] off the bike in two seconds, if [he] did not get off" because he had already ordered § 87(2)(b) to get off the bike over 12 times. When asked if he ever intended to rip § 87(2)(b) off the bike, PO Dorado said once he made the statement, § 87(2)(b) complied, so it would not have been necessary.

PO Bruszewski's statement was generally consistent with the BWC footage and PO Dorado's statement. He testified that § 87(2)(b) remaining on the bike gave him an opportunity to flee and/or possibly run over the officers or other pedestrians, which is why he needed to comply with PO Dorado's orders.

NYPD Patrol Guide, Procedure 221-01 states that officers may use physical force if it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (**Board Review 20**). In evaluating whether force is reasonable, the Patrol Guide instructs officers to consider:

- a. "The nature and severity of the crime/circumstances; b. Actions taken by the subject; c. Duration of the action; d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; e. Whether the subject is actively resisting custody; f. Whether the subject is attempting to evade an arrest by flight; g. Number of subjects in comparison to the number of MOS; h. Size, age, and condition of the subject in comparison to the MOS; i. Subject's violent history, if known; j. Presence of hostile crowd or agitators; k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence."

Though PO Dorado said he perceived § 87(2)(b)'s hands remaining on the handlebar as a potential intention to flee, the BWC footage shows that only one of § 87(2)(b)'s hands remained on the handlebar, a position consistent with a natural place to keep one's hand while sitting upright on a bike, and inconsistent with an attempt to flee. Furthermore, PO Bruszewski's BWC footage confirms that while § 87(2)(b) and § 87(2)(b) remained seated on the bike, there was no hostile crowd or agitators, nor any pedestrians in the general vicinity, which supports that no immediacy of any perceived threat or harm to anyone existed. Additionally, neither PO Dorado nor PO Bruszewski expressed that either civilian appeared under the influence of a stimulant or narcotic nor that they were ever considered under arrest or actively resisted. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Though § 87(2)(b) and § 87(2)(b) both alleged that PO Dorado threatened them with the use of force, the BWC footage revealed that PO Dorado made the threat while he was conversing solely with § 87(2)(b) whom he was standing directly in front of. Additionally, the fact that PO Dorado began his threat with "dude," further indicates that he was only speaking to § 87(2)(b) and not § 87(2)(b). § 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Lieutenant Mark Schwartz seized § 87(2)(b)'s property.

In PO Dorado's BWC footage (**Board Review 06**), beginning at the 02:04 minute mark of the media player timestamp (visible at the bottom of the screen), PO Dorado orders § 87(2)(b) to produce his ID. § 87(2)(b) says he does not have it. He speaks on the phone while PO Dorado repeatedly orders him to produce his ID to no response. At 07:22, Lieutenant Schwartz and Police Officer Thomas Calio, both of the 109th Precinct, arrive. PO Dorado tells Lieutenant Schwartz what happened before his arrival. At 10:30, PO Dorado approaches § 87(2)(b) and orders him to produce ID. At 11:30, § 87(2)(b) hands PO Dorado his phone, which has a picture of his ID on the screen. At 20:26, on the side of § 87(2)(b)'s bike, "§ 87(2)" and, "§ 87(2)(b)" are visible written in white lettering and on the license plate on the bike of the bike, "§ 87(2)(b)" is written in green lettering. At 28:18, Lieutenant Schwartz tells PO Dorado he spoke to the NYPD Legal Bureau and that PO Dorado can issue § 87(2)(b) summonses for operating on the sidewalk, without a helmet, and without a valid driver's license. He says the officers will have to seize § 87(2)(b)'s bike. At 30:15, PO Dorado enters his police car and writes § 87(2)(b)'s summonses. At 47:33, PO Dorado hands § 87(2)(b) his summonses and says the officers are seizing his bike. § 87(2)(b) says he will pick it up at the stationhouse. PO Dorado drives the police car and PO Bruszewski drives § 87(2)(b)'s bike to the 109th Precinct stationhouse.

§ 87(2)(b)'s and § 87(2)(b)'s statements were generally consistent with the BWC footage.

PO Dorado testified that § 87(2)(b)'s bike needed to be seized and vouchered because per NYPD Legal, if a summons for an electric bike is served, the bike needs to be seized. PO Bruszewski testified that he did not know why the bike had to be seized.

A property voucher, prepared by PO Dorado, for § 87(2)(b)'s bike, was received from IAB (**Board Review 27**), and shows the bike was vouchered as "rotation tow."

Per their website, § 87(2)(b) the manufacturer of § 87(2)(b)'s bike, classifies it as a Moped Scooter (**Board Review 29**).

NYPD Patrol Guide, Procedure 209-09 states that a person operating a limited use vehicle (minibike, moped, etc.) on a public highway (road, street, avenue, highway, etc.) is subject to all applicable provisions of the Vehicle and Traffic Law and that if a limited use vehicle is unregistered and/or the operator unlicensed, the vehicle will be removed to the precinct of occurrence, impounded, and invoiced (**Board Review 28**).

§ 87(2)(g) § 87(2)(b) received a summons for operating his bicycle without a license. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g) PO Dorado seized the bicycle per
Lieutenant Schwartz's instruction § 87(2)(g)
§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) (**Board Review 23**) and § 87(2)(b) (**Board Review 24**) have been party.
- PO Dorado has been a member of service for 23 years and has been a subject in five CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 14, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed by § 87(2)(b) or § 87(2)(b) in regards to this incident (**Board Review 25**).
- § 87(2)(b)

Squad: 13

Investigator: _____ Inv. Ariana Thomas 06/1/2022
 Signature Print Title & Name Date

Squad Leader: _____ IM Laura Kastner 06/01/2022
 Signature Print Title & Name Date